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DAN SMOOT

FORGIVE THE CRIMINAL; PUNISH THE VICTIM

For many months, new-left-communist anarchists have been organizing and inciting bloody and destructive riots, to protest American institutions in general, and the injustice of American courts in particular.

In claiming there is no justice in American courts, the new-left-communists are partially right, but for the wrong reasons. If there were justice in American courts, thousands of new-left-communist anarchists would now be in prison, and thousands of other criminals now out on bond, parole, or probation would be behind bars.

The new-left-communist conspiracy was primarily responsible for the breakdown in the American judicial system. The conspiracy worked, propagandized, and lobbied for the 1954 *Brown* decision of the Warren Court, which opened the floodgates for lawlessness. That decision revealed that the Warren Court would violate the Constitution and judicial precedents to rule as it pleased. Numerous subsequent decisions revealed that the Warren Court pleased to rule consistently in favor of the enemies of our society — communists, traitors, seditionists, and ordinary criminals.

In the early 1960's, the communist-inspired civil rights movement, under the leadership of Martin Luther King, Jr., began a massive assault on existing laws and customs in southern states. King called it "civil disobedience," claiming that people have a right to disobey laws they do not like.

Southern states could not cope with this open warfare against their people, laws, and institutions, because of the federal courts. Civil rights "demonstrators" could block public buildings and thoroughfares, commit criminal trespass on private property, disturb the peace, incite riots, assault officers of the law, commit acts of indecency in public. When they were arrested, federal courts (the Supreme Court, a lower federal appeals court, or a federal district court) usually ordered them released — on the wholly untenable grounds that the law-breakers were protected by "free speech," and "free assembly"

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provisions of the First Amendment to the federal Constitution.

In the late 1960's, the "peaceful, civil disobedience" of Martin Luther King, Jr., escalated, by design, into violent, raging anarchy throughout the country. But the precedents set by the Warren Court rendered local law enforcement ineffective. Successful prosecution against members of a mob, "demonstrating" for some cause approved by new-left communists, had become virtually impossible. Successful prosecution of ordinary criminals had become extremely difficult because of Supreme Court decisions sheltering criminals with senseless technicalities and distortions of the Constitution.

The attitude of the Warren Court — that the enemies of our society, whether they be pro-communist revolutionaries or ordinary criminals, must be protected at all cost — has affected the attitude not only of lower federal courts, but also of state courts.

Consequently, in many courts, a forgive-and-forget justice now prevails: forgive the criminal and forget the victim. Indeed, courts sometimes forgive the criminal and *punish* the victim. Some courts, in their zeal to protect criminals, punish police officers and ordinary citizens who try to defend themselves or society against criminals.

There have been many cases involving police officers who were prosecuted for injuring a hoodlum caught in the act of committing a crime.

Most newspaper readers remember the case, a few years ago, of a girl in New York City who fought off a would-be attacker by firing a tear gas pen in his face. The attacker was not prosecuted (because his attack was unsuccessful and he denied that he had intended harm); but the girl was prosecuted for carrying a weapon that is illegal under New York firearms-control laws.

The Briney case of Eddyville, Iowa, and the Downey case of Chicago, Illinois, are recent illustrations of the harsh injustice toward decent citizens, and the soft leniency toward hoodlums, which now characterize many courts in our land.

The Briney Case[1]. Mr. and Mrs. Edward Briney, a middle-aged farm couple, owned a 120-acre farm on the edge of Eddyville, Iowa. The farm had been in Mrs. Briney's family for almost 70 years. She inherited the place from her parents when they died in 1967. The house which the parents had lived in was untenanted after their deaths; but much of the furniture and furnishings remained, pending final disposition of the estate.

In the summer of 1967, there was an epidemic of breakings-and-enterings and nighttime robberies in the Eddyville community. The vacant house on the Briney farm was burglarized several times. The crimes were reported to officials, but were not solved. Eventually, Mr. Briney built a booby trap to protect the house. He mounted a loaded shotgun inside a bedroom, and triggered it to fire if someone broke in.

On the night of July 16, 1967, Marvin Katko (now age 30) and a companion broke into the Briney house. The gun went off, wounding Katko in the right ankle. Both burglars were caught. Charged with the felony of breaking and entering, they both pleaded not guilty.

Their attorney (Garold Heslinga of Oskaloosa, Iowa) contrived to delay the trial for several months. In 1968, Heslinga made a deal with the district attorney: each of the two defendants pleaded guilty to a misdemeanor charge of larceny in the nighttime; and the state dropped the felony charge of breaking and entering. Katko and his cohort were each fined $50, given suspended sentences of six months, and put on probation for six months.

Acting upon advice of attorney Heslinga, Katko then sued Mr. and Mrs. Briney for $60,000. He claimed the shotgun wound he received when he broke into the Briney house had permanently injured his right leg.

Katko's civil case against the Brineys was tried in the same court that had tried the criminal case against Katko. The same judge presided. In November, 1969, an all-woman jury brought in a verdict against the Brineys. They were ordered to pay $35,000 — $5000 in court costs, and $30,000

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in damages to Katko. They could not raise $35,000. The court ordered the sheriff to auction off 80 acres of their 120-acre farm. The house that Katko and companion had burglarized is on the 80 acres.

More than 400 of Mr. and Mrs. Briney's friends and neighbors attended the sheriff's auction. One man carried a hand-lettered sign which said:

"This is a poor court of law that will take from an honest man and give to a thief."

There were only two bids made. Heslinga, Katko's attorney, bid $10,000. A committee of Briney friends and neighbors bid $10,001, and bought the land, to hold it in trust for the Brineys until their case is settled. It is now on appeal before the Iowa Supreme Court. A decision is expected next fall. Meanwhile, the Mahaska County District Court is trying to collect the remaining $25,000 from the Brineys.

Mr. and Mrs. Briney have received letters of sympathy, and some financial help, from all over the country. Their case prompted the introduction of three bills in the Iowa legislature. One, commonly referred to as "the Briney Bill," would authorize a person to use "any means necessary" to defend his life, family, or property, or to go to the aid of another, without being placed in legal jeopardy.

Marvin Katko, who admits to breaking into the Briney house to steal, says:

"I didn't think any man could be that sneaky and would set up a device like that. I'll be the first to admit that I was wrong, but I think Mr. Briney went overboard."

Katko says that he has received "a lot of hate mail from across the country," and that he has been "cold-shouldered by many of the people in Eddyville."

Garold Heslinga says "many, many" people have written letters criticizing him for representing Katko in the damage suit against the Brineys. Heslinga dismisses such critics with angry invective. He says:

"These are the law-and-order nuts — the same ones that criticize the college kids for violence but somehow justify this type of violence."

The Downey Case[2]. Robert Downey is, or was, a truck driver in Chicago. One night in March, 1970, Downey and his family (wife and two sons, ages 15 and 16) returned home from grocery shopping and saw that their apartment had been burglarized. A window had been broken, and drawers pulled out.

Downey and his two sons ran outside. They found three men standing in the alley. Downey grabbed one of them (Donald Bereta, age 20), who was holding two rifles that belonged to Downey. The other two men ran. The boys gave chase, but the two men got away. While running, one of them discarded a shotgun that belonged to Downey.

Downey and the boys took Bereta into the apartment, and called the police. The police came and took everyone to the station: Mr. and Mrs. Downey, their two boys, and Donald Bereta. Police also took Downey's three guns.

After determining that Bereta had a prior record (involving car theft), the police booked him on a burglary charge, and locked him up.

Then a detective asked Mr. Downey whether his guns were registered.

"Registered?" Mr. Downey asked, bewildered.

"Yes, registered," the detective replied.

Downey explained that he had just moved to Chicago from Wisconsin, where he and his sons used to do a lot of hunting with their guns; there was no Wisconsin law requiring registration of hunting guns, and he did not know that Illinois had such a law; if he had known, he would have registered his guns.

The explanation did no good. Police booked Mr. Downey for failure to register his guns, and told him he must post a $100 cash bond to get out. They put Downey in jail. His wife and boys went home and called relatives until they raised $100.

In April, 1970, Donald Bereta and Robert Downey went to court. Their cases were tried before the same judge, Daniel J. White.

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Bereta pleaded guilty to possession of the guns stolen from Downey, but denied that he stole them or knew they were stolen. He said:

"I was walking to the store, and I was approached by two guys. I didn't know them. They offered me $25 to move some guns that were in the alley."

That is why, Bereta claimed, he happened to be standing in a dark alley with two stolen guns in his hands when Downey grabbed him. Judge White accepted that story, and dismissed the charges against Bereta.

Judge White fined Robert Downey $500 for not registering his guns. Downey did not have $500, so he was sent back to jail. Mrs. Downey got $100 from Mr. Downey's boss, some money from relatives, and some from friends. Late that night, she had enough to bail her husband out of jail again.

The next day, Robert Downey (age 42) went to Indiana to look for another job. Interviewed by a reporter, he said:

"I am getting out of this goofy town. I'm the one who was burglarized, and I'm the only one convicted of anything.

"They got my guns, and I can't get them back, and I still haven't got my $100 bond back. So, I'm out my property and $600.

"The night after I was burglarized, somebody threw a brick through the windshield of my car. I can't even afford to fix that now.

"If I can't get a job in Indiana, then I'll go back to Wisconsin. But I'm getting out of this town.

"Is everybody here crazy?"

* * *

IT CAN BE DONE. Our recent *Reports* on public schools have evoked much response from subscribers. One interesting letter came from a parent in Westminster, California. She and another parent hired a teacher and established a private school for their three youngsters. She says:

"Our teacher conducts classes . . . in a private home . . . using the McGuffey Primer as the basic reading text, Luther's small Catechism . . . for memorization, . . . the KJV Holy Bible for religious instruction, the blackboard for handwriting and arithmetic instruction. . . . Our three kindergarten students, after seven months of instruction, *read*, *write*, and *do arithmetic* . . . on an achievement level equal to the beginning third grade level of public school pupils.

"Our students are well-disciplined, well-adjusted, happy children, having realized . . . the satisfaction of achievement at an early age. My son has about 45 minutes of *homework* each day, and tackles it with zest.

"We . . . [intend soon] to make a public presentation of our program to other concerned parents . . . hopeful we will be able to go to a rented building in the fall and . . . turn our 'tutoring' program into a full-fledged Christian Day school. . . .

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Our 12 *Reports* on education are still available at the special price of $1.00 per set.

FOOTNOTES

(1) Los Angeles *Herald-Examiner*, Jan. 30, 1970, p. A16; Dallas *Morning News*, Feb. 4, 1970; Editorial Viewpoint broadcast, WRAL-TV, Raleigh, North Carolina, Feb. 5, 1970; Dallas *Times Herald*, Feb. 9, 1970, p. A7; St. Louis *Post-Dispatch*, Feb. 8, 1970, p. A15

(2) Mike Royko column, distributed by Chicago Daily News Service, published in Louisville *Courier-Journal*, April 9, 1970

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